

**AGENDA FOR THE
REGULAR COUNCIL MEETING OF
MONDAY, APRIL 28, 2003 AT 2:00 P.M.
TABLE OF CONTENTS**

SPECIAL ORDERS OF BUSINESS:

ITEM-30: Approval of Council Minutes.	3
ITEM-31: Marcia McLatchy Day.	3
ITEM-32: Ralph Stewart Day.	4
ITEM-33: Paul Thomas Day.	4

REQUESTS FOR CONTINUANCE	4
--------------------------------	-------------------

CONSENT ITEMS	5
---------------------	-------------------

ADOPTION AGENDA, CONSENT ITEMS

ORDINANCES TO BE INTRODUCED, RESOLUTIONS TO BE ADOPTED:

* ITEM-50: <u>Three</u> actions related to Non-Exclusive Solid Waste Collection Franchises.	5
-----------------------------------------------------------------------------------------------------	-------------------

ADOPTION AGENDA, CONSENT ITEMS

RESOLUTIONS:

* ITEM-100: <u>Two</u> actions related to Inviting Bids and Award of Contract for Mission Trails Regional Park East Fortuna Equestrian Staging Area.	6
* ITEM-101: Consultant Agreement - Nobel Athletic Area and Library.	8
* ITEM-102: Contract Change Order #1 - Rubberized Emulsion Aggregate Slurry Coating of Various Streets City Wide Group S-7.	9
* ITEM-103: Contract Change Order No.	10
* ITEM-104: Inviting Bids and Award of Contract for the Construction of Memorial Community Park - Skateboard Park.	11
* ITEM-105: Additional Funding for Sewer Pump Station 45 - Rehabilitation Project.	13
* ITEM-106: Gregory Evans Knoll Day.	15

* ITEM-107: La Jolla High School Men’s Basketball Team Day.	15
* ITEM-108: National Beach Safety Week.	16
* ITEM-109: American Youth Soccer Organization (AYSO) Days.	16
* ITEM-110: Proposal to Support/Oppose Certain 2003 State Legislation.	16
* ITEM-111: Recommendation 8 Made by the Mayor’s Blue Ribbon Committee on Budget and Finance: Operating Efficiencies.	17
* ITEM-112: Recommendation 9 Made by the Mayor’s Blue Ribbon Committee on Budget and Finance: Budget Principles.	19
* ITEM-113: Nomination to the Centre City Development Corporation (CCDC) Board of Directors.	20

ADOPTION AGENDA, DISCUSSION, COMMITTEE ITEMS
COMMITTEE ON NATURAL RESOURCES, AND CULTURE, ORDINANCE TO BE
INTRODUCED WITH RESOLUTION TO BE ADOPTED:

ITEM-150: Two actions related to Grading Activity on Sensitive Resources and Canyons.	20
-----------------------------------------------------------------------------------------------	--------------------

ADOPTION AGENDA, DISCUSSION, OTHER LEGISLATIVE ITEMS
RESOLUTION:

ITEM-200: Adoption of an Amendment to the Progress Guide and General Plan and the Sorrento Hills Community Plan.	22
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ADOPTION AGENDA, DISCUSSION, HEARINGS
SPECIAL HEARING:

ITEM-201: Conference with Real Property Negotiator, pursuant to California Government Code Section 54956.8 - Qualcomm Stadium:	24
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PUBLIC NOTICE:

Items are listed under Public Notice as a matter of public record only. These items do not require Council action and there is no public testimony.

ITEM-250: Notice of Completion and Acceptance of Subdivision Improvement Agreement.	24
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**AGENDA FOR THE
REGULAR COUNCIL MEETING OF
MONDAY, APRIL 28, 2003 AT 2:00 P.M.
CITY ADMINISTRATION BUILDING
COUNCIL CHAMBERS - 12TH FLOOR
202 "C" STREET
SAN DIEGO, CA 92101**

ITEM-1: ROLL CALL.

ITEM-10: INVOCATION.

ITEM-20: PLEDGE OF ALLEGIANCE.

SPECIAL ORDERS OF BUSINESS

ITEM-30: Approval of Council Minutes.

TODAY'S ACTION IS:

Approval of Council Minutes for the meetings of:

3/17/2003
3/18/2003
3/24/2003
3/25/2003
3/25/2003 Special Joint

SPECIAL ORDERS OF BUSINESS

ITEM-31: Marcia McLatchy Day.

COUNCILMEMBER ATKINS' RECOMMENDATION:

Adopt the following resolution:

(R-2003-1210)

Commending Marcia McLatchy for her 29 years of dedicated service to the City
and wishing her well during her much-deserved retirement;

Proclaiming April 28, 2003, to be “Marcia McLatchy Day” in the City of San Diego.

SPECIAL ORDERS OF BUSINESS

ITEM-32: Ralph Stewart Day.

COUNCILMEMBER MAIENSCHIN’S RECOMMENDATION:

Adopt the following resolution:

(R-2003-1239)

Honoring Ralph Stewart for his outstanding contributions and service to the people of San Diego;

Proclaiming April 28, 2003 to be “Ralph Stewart Day” in the City of San Diego.

SUPPORTING INFORMATION:

Ralph Stewart was recently awarded a Distinguished Service Leadership Award for his work with the RB Neighborhood Watch/Emergency Preparedness. He volunteers at the Rancho Peñasquitos Police Substation where he writes up the details on all crimes that occur in the area. He heads up the Emergency Preparedness Program for the Seven Oaks Community.

Maienschein

SPECIAL ORDERS OF BUSINESS

ITEM-33: Paul Thomas Day.

COUNCILMEMBER MADAFFER’S RECOMMENDATION:

Adopt the following resolution:

(R-2003-1186)

Recognizing Paul Thomas and proclaiming April 28, 2003 to be “Paul Thomas Day” in the City of San Diego.

REQUESTS FOR CONTINUANCE

The Council will now consider requests to continue specific items.

CONSENT ITEMS

The following listed items are considered to be routine, and the appropriate Environmental Impact Reports have been considered. These items are indicated on the docket by a preceding asterisk (*).

ORDINANCES TO BE INTRODUCED, READY FOR DISPENSING WITH THE READING AND ADOPTION:

None.

ORDINANCES TO BE INTRODUCED:

None.

ORDINANCES TO BE INTRODUCED, WITH RESOLUTIONS TO BE ADOPTED:

Item 50.

RESOLUTIONS TO BE ADOPTED:

Items 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, and 113.

ADOPTION AGENDA, CONSENT ITEMS

ORDINANCES TO BE INTRODUCED, RESOLUTIONS TO BE ADOPTED:

* ITEM-50: Three actions related to Non-Exclusive Solid Waste Collection Franchises.

(Citywide.)

CITY MANAGER'S RECOMMENDATION:

Introduce the ordinances in Subitems A and B and adopt the resolution in Subitem C:

Subitem-A: (O-2003-137)

Introduction of an Ordinance amending Chapter 6, Article 6, Division 1, of the San Diego Municipal Code by amending Sections 66.0102, 66.0113, 66.0119, and 66.0123, relating to Solid Waste Collection Franchises.

Subitem-B: (O-2003-138)

Introduction of an Ordinance authorizing the City Manager to execute amendments to the Class I Solid Waste Franchise Agreements with the Class I

Franchisees and to execute New Class II Solid Waste Franchise Agreements with the Class II Franchisees.

NOTE: 6 votes required for Subitems A and B pursuant to Section 103 of the City Charter.

Subitem-C: (R-2003-1179)

Increasing the franchise fee, effective April 1, 2003, for Class I franchisees of the City's Non-Exclusive Solid Waste Management Franchise system by \$1 per ton to \$11 per ton and the franchise fee for Class II franchisees of the City's Non-Exclusive Solid Waste Management Franchise system by \$1 to \$12 per ton;

Declaring that the City's franchise application process shall remain closed and the City shall not award additional Non-Exclusive Solid Waste Management Franchises at this time;

Amending the City of San Diego Fee Schedule and Regulations for the Miramar Landfill, adopted by Resolution R-296671 on June 17, 2002, and set forth in Attachment 1 to City Manager Report No. 02-141, by increasing the Standard Disposal Fee for both General Refuse and Construction and Demolition waste generated within the City by \$1 per ton to \$28 per ton and by increasing the Standard Disposal Fee for General Refuse and Construction and Demolition waste generated outside the City by \$3 per ton to \$34 per ton, both effective May 1, 2003.

ADOPTION AGENDA, CONSENT ITEMS
RESOLUTIONS:

* ITEM-100: Two actions related to Inviting Bids and Award of Contract for Mission Trails Regional Park East Fortuna Equestrian Staging Area.

(Mission Trails Regional Park Community Area. District-7.)

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolutions:

Subitem-A: (R-2003-1044 Cor. Copy)

Approving the plans and specifications for the construction of the Mission Trails Regional Park Equestrian Staging Area Project (Project) on Work Order No. 201013;

Authorizing the City Auditor and Comptroller to appropriate \$575,000 from MTRP (Antenna) Fund, Fund No. 10580, to CIP-20-101.3, Mission Trails Regional Park - East Fortuna Equestrian Staging Area;

Authorizing the City Manager to accept grant proceeds of \$985,000 and donations of \$265,000 from the Mission Trails Foundation and directing the Auditor and Comptroller to establish a special interest bearing Fund No. 38322, Mission Trails Regional Park Grant and donation, to deposit the proceeds;

Authorizing and directing, in accordance with the Fiscal Year 2003 Appropriation Ordinance, the City Auditor and Comptroller to amend the Capital Improvement Program (CIP) Budget to increase CIP-20-101.3, Mission Trails Regional Park - East Fortuna Equestrian Staging Area, by the amount of \$1,825,000, of which \$1,250,000 is from Fund No. 38322, Mission Trails Regional Park Grant and Donation, and \$575,000 is from Fund No. 10580, MTRP (Antenna) Fund;

Authorizing the expenditure of an amount not to exceed \$1,825,000 from CIP-20-101.3, Mission Trails Regional Park - East Fortuna Equestrian Staging Area, for the purpose of the construction of Mission Trails Regional Park East Fortuna Equestrian Staging Area Project, provided that the City Auditor and Comptroller first furnishes a certificate certifying that funds are, or will be, on deposit with the City Treasurer;

Authorizing, after advertising for bids in accordance with the law, the City Manager to establish contract funding phases, to award a contract to, and to execute a contract with, the lowest responsible and reliable bidder for the Project, contingent upon: a) City Council approval of the expenditure of any additional Project funding that may become necessary as a result of the bid opening for the Project; and b) the City Auditor and Comptroller first furnishing one or more certificates certifying that the funds necessary for expenditure are, or will be, on deposit with the City Treasurer;

Authorizing the City Auditor and Comptroller, upon advice from the administering department, to transfer excess budgeted funds, if any, to the appropriate reserves.

Subitem-B: (R-2003-1045)

Certifying that the information contained in the final Mitigated Negative Declaration document, including any comments received during the public review process, has been reviewed and considered by Council and it is determined that no substantial changes or new information of substantial importance within the meaning of CEQA Guideline Section 15162 would warrant any additional environmental review in connection with approval of Mission Trails Regional Park East Fortuna Equestrian Staging Area project;

Directing the City Clerk to file a Notice of Determination.

CITY MANAGER SUPPORTING INFORMATION:

The Mission Trails Regional Park - East Fortuna Equestrian Staging Area project is located in the northeastern portion of the park and accessed by Mast Boulevard. The project construction for this 12 acre site will provide a multi-use staging area to improve access to the existing park trail

system. The proposed improvements include a parking lot for equestrian users, a 49-space parking lot for other vehicles, picnic areas, minimal security lighting and an internal loop access road.

FISCAL IMPACT:

\$675,000 has been previously authorized for this project. \$520,000 of these funds have been utilized for preliminary engineering, project design and completion of construction drawings. Additional funding for the construction contract and related costs in the amount of \$1,825,000 are available from Fund No. 38322 Mission Trails Regional Park Grant and Donation (\$1,250,000) and from Fund No. 10580, MTRP (Antenna) Fund (\$575,000).

Previously Authorized\$	675,000
<u>Amount of Increase</u>	<u>\$1,825,000</u>
Total amount	\$2,500,000

Herring/Oppenheim/RS

Aud. Cert. 2300904.

ADOPTION AGENDA, CONSENT ITEMS
RESOLUTIONS:

* ITEM-101: Consultant Agreement - Nobel Athletic Area and Library.

(University City Community Area. District-1.)

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2003-1209)

Authorizing the City Manager to execute an agreement with Platt/Whitelaw Architects, Inc., for professional services for the Nobel Athletic Area and Library;
and

Authorizing the City Auditor and Comptroller to expend \$319,142 from
CIP-35-098.0, North University Community Branch Library, North University
City FBA, Fund No. 79001;

Authorizing the City Auditor and Comptroller, upon advice from the administering
department, to transfer excess budgeted funds, if any, to the appropriate reserves.

CITY MANAGER SUPPORTING INFORMATION:

The Agreement with Platt/Whitelaw Architects, Inc. will provide the professional services

required for the preparation of bridging documents and construction support services for Nobel Athletic Area and Library. This 30 acre park is located in the northeast corner of Nobel Drive and Shoreline Drive, in the community of University City. The proposed improvements include a 15,000-square foot library, 10,000 squared foot recreation center, site grading, storm water drainage systems, utilities, multi-use sports fields, parking lots, children's play areas, picnic areas, dog off-leash area, pre-engineered comfort station, security and ball field lighting, pedestrian walkways, ADA ramps, fencing, monument signs, landscaping, irrigation systems, public art, and other amenities desired by the community.

In June 2000, Council approved a consultant agreement with ONA, Inc. to prepare the General Development (GDP) Plan for Nobel Athletic Area and Library. Platt/Whitelaw Architects, Inc. the architectural subconsultant to ONA. Inc., provided the preliminary design for the library and recreation center portion of the GDP. The GDP is in its last stages of completion, and it has been decided to use design-build (DB) project delivery process to construct the project. However, ONA, Inc., a Landscape Architecture Firm, has no expertise in design build projects, and is not suited to provide the professional services required for this phase of the project. Platt/Whitelaw Architects. Inc. has experience in the design build process and is intimately familiar with the project. Therefore, it would be beneficial to the City to retain Platt/Whitelaw Architects, as the lead consultant, rather than to select a new consultant to prepare the bridging documents and provide construction support for the project.

FISCAL IMPACT:

The agreement allows for a base fee of \$219,142 for specified scope and \$100,000 for construction support services. Funds in the amount of \$319,142 are available in CIP-35-098.0, North University City Community Branch Library, North University City FBA, Fund No. 79001.

Loveland/Belock/AO

Aud. Cert. 2301088.

ADOPTION AGENDA, CONSENT ITEMS RESOLUTIONS:

- * ITEM-102: Contract Change Order #1 - Rubberized Emulsion Aggregate Slurry Coating of Various Streets City Wide Group S-7.

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2003-1212)

Approving Change Order No. 1 dated February 25, 2003, issued in connection with the contract between the City of San Diego and American Asphalt South, Inc., for Rubberized Emulsion Aggregate Slurry Coating of Various Streets City Wide Group S-7; and approving the change reducing the total contract amount by

\$922,936.70 (from \$2,616,380 to \$1,693,443.30).

CITY MANAGER SUPPORTING INFORMATION:

On October 21, 2002, the City Council authorized the City Manager to execute a contract extension option with American Asphalt South Inc., for Rubberized Emulsion Aggregate Slurry Coating of Various Streets City Wide Group S-7 in the amount of \$2,616,380. On December 10, 2002, the City was notified of the Governor's mid-year spending reduction plan which included the "elimination of second, third, and fourth quarter FY 2002-2003 apportionments to local agencies for street and road maintenance", (AB 2928 funding). Accordingly, funding from the Street Division Operating Fund for this project will be reduced from \$2,616,380 to \$1,693,443.30.

Contract Change Order #1 reduces the amount of the contract by \$922,936.70 and the number of miles of slurry sealing is reduced from 105 miles to approximately 68 miles. A revised list of the streets to be slurry sealed is being prepared and will be distributed to the Council Members.

FISCAL IMPACT:

Funds for this project, \$1,693,443.30, are available from Street Division Operating Fund 10440.

Loveland/Gonzalez/MMW

**ADOPTION AGENDA, CONSENT ITEMS
RESOLUTIONS:**

* ITEM-103: Contract Change Order No. 2 - Resurfacing Various Streets Citywide Group R-6.

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2003-1227)

Approving Change Order No. 2, dated February 19, 2003, issued in connection with the contract between the City of San Diego and Superior Ready Mix Concrete dba SRM Contracting and Paving, for Resurfacing of Various City Streets Citywide Group R-6 (Bid-K02240C), and approving the change therein set forth, reducing the total contract amount by \$1,000,000 (from \$4,336,102.93 to \$3,336,102.93).

CITY MANAGER SUPPORTING INFORMATION:

On October 21, 2002, the City Council authorized the City Manager to execute a contract extension option with Superior Ready Mix Concrete, dba SRM Contracting and Paving for the Resurfacing of Various Streets Citywide Group R-6 in the amount of \$4,273,750. Contract Change Order #1, approved by the City Manager, increased the original contract by \$62,352.93 to include MWWD funded resurfacing work associated with a sewer project. This

brought the contract total to \$4,336,102.93. On December 10, 2002, the City was notified of the Governor's mid-year spending reduction plan which included the "elimination of second, third, and fourth quarter FY 2002-2003 apportionments to local agencies for street and road maintenance," (AB 2928 funding). Accordingly, Street Division Operating Funds for this project will be reduced from \$3,660,650 to \$2,660,650.

Contract Change Order No. 2 reduces the amount of the contract by \$1,000,000 to \$3,336,102.93, and the number of miles of resurfacing from 26 miles to approximately 21.5 miles. A revised list of the streets to be resurfaced is being prepared and will be distributed to the Council Members prior to the hearing of this item.

FISCAL IMPACT:

Funds for this project are available as follows; \$2,660.650 from Street Division Operating Fund 10440, \$500,000 from Fund 30300/CIP 59-001.0, Annual Allocation to be funded by TransNet Fund 30300, \$70,200 from Sewer Revenue Fund 41506, and \$42,900 from Water Department Fund 41500 for a total of \$3,273,750.

Loveland/Gonzalez/MMW

ADOPTION AGENDA, CONSENT ITEMS RESOLUTIONS:

- * ITEM-104: Inviting Bids and Award of Contract for the Construction of Memorial Community Park - Skateboard Park.

(Southeastern San Diego/Memorial Community Area. District-8.)

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2003-1124)

Approving the plans and specifications for the furnishing of all labor, material, tools, equipment, transportation and other expense necessary or incidental and inviting bids for the Construction of Memorial Community Park - Skateboard Park;

Authorizing the City Auditor and Comptroller to transfer funds in an amount not to exceed \$165,777 from CIP-20-013.0, Park and Recreation Grant Match Funding, to CIP-29-515.0, Memorial Community Park - Skateboard Park, for the purpose of providing funds for the Project;

Authorizing the City Auditor and Comptroller to transfer funds in an amount not to exceed \$100,000 from CIP-29-458.0, State Route 252 Corridor Park, Fund 41205, EDCO Community Enhancement Funds, to CIP-29-515.0, Memorial Community Park - Skateboard Park;

Authorizing the City Auditor and Comptroller to appropriate \$80,000 from EDCO Community Enhancement Funds, Fund 41205, to CIP-29-515.0, Memorial Community Park - Skateboard Park;

Authorizing the City Auditor and Comptroller to transfer funds in an amount not to exceed \$45,000 from CIP-29-505.0, Otay Valley Athletic Complex from Park Bond Per Capita Fund 38193, 2000 Park Bond, to CIP-29-515.0, Memorial Community Park - Skateboard Park;

Authorizing the City Auditor and Comptroller to transfer funds in an amount not to exceed \$140,000 from DIF, Fund 79511, to CIP-29-515.0, Memorial Community Park - Skateboard Park;

Authorizing the City Auditor and Comptroller to transfer funds in an amount not to exceed \$80,000 from Park Bond Per Capita Fund 38181, 2000 Park Bond, to CIP-29-515.0, Memorial Community Park - Skateboard Park;

Authorizing and directing the City Auditor and Comptroller, in accordance with the Fiscal Year 2003 Appropriation Ordinance, to amend the Capital Improvement Program [CIP] Budget to increase CIP-29-515.0, Memorial Community Park - Skateboard Park by the amount of \$610,777;

Authorizing the expenditure of an amount not to exceed \$610,777 from CIP-29-515.0, Memorial Community Park - Skateboard Park, provided that the City Auditor and Comptroller first furnishes a certificate certifying that funds are, or will be, on deposit with the City Treasurer;

Authorizing the City Manager, after advertising for bids in accordance with the law, to award a contract to, and to execute a contract with, the lowest responsible and reliable bidder for the Project, contingent upon: (a) City Council approval of the expenditure of any additional Project funding that may become necessary as a result of the bid opening for the Project; and (b) the City Auditor and Comptroller first furnishing one or more certificates certifying that the funds necessary for expenditures are, or will be, on deposit with the City Treasurer;

Authorizing the City Auditor and Comptroller, upon advice from the administering department, to transfer excess budgeted funds, if any, to the appropriate reserves.
(BID-K03663)

CITY MANAGER SUPPORTING INFORMATION:

The project is located on the northwest corner of 30th Street & Marcy Avenue. The Memorial Community Park -Skate Park proposes to construct a 24,000 square foot skateboard park with landscaping, a pre-fabricated office and a walkway. The design of the project was presented to the Subcommittee for the Removal of Architectural Barriers (SCRAB Committee) on June 13, 2002, and was approved. Based on consultant cost estimate, additional funds are needed to complete the total project.

In March 2000, California voters passed the Safe Neighborhood Parks, Clean Water, Clean Air, and Coastal Protection Bond Act of 2000 which allocates funding to the City of San Diego on a per capita basis. The Memorial Community Park -Skate Park project was designated by Council District 8 for funding from their portion of the 2000 State Park Bond Roberti-Z'berg-Harris Per Capita funding.

FISCAL IMPACT:

The estimated cost for this project is \$1,410,777. Funds currently available in CIP-29-515.0, Memorial Community Park -Skateboard Park are \$800,000. With this action additional funds will be transferred into the project from CIP-29-458.0, Fund 41205 (\$100,000 funded by EDCO); CIP-20-013.0, Fund 630221, Park and Recreation Grant Matching Fund, (\$165,777), Park Bond Per Capita Fund 38181 (\$80,000 funded by 2000 Park Bond), EDCO Community Enhancement Funds, Fund 41205 (\$80,000), CIP-29-505.0, Otay Valley Athletic Complex, 2000 Park Bond (\$45,000), and DIF Fund 79511 (\$140,000). The Memorial Community Park -Skate Park project CIP-29-515.0 will be increased by a total of \$610,777.

Loveland/Belock/AO

Aud. Cert. 2301069.

**ADOPTION AGENDA, CONSENT ITEMS
RESOLUTIONS:**

* ITEM-105: Additional Funding for Sewer Pump Station 45 - Rehabilitation Project.

(See memorandum from Frank Belock, Jr. dated 2/26/2003. La Jolla and University City Community Areas. District-1.)

TODAY'S ACTIONS ARE:

Adopt the following resolutions:

Subitem-A: (R-2003-1196)

Authorizing an additional expenditure of an amount not to exceed \$446,817, of which an amount not to exceed \$417,770 is from Sewer Fund 41506, CIP-46-601.6, Sewer Pump Station 45 - Rehabilitation, and an amount not to exceed \$29,047 is from Sewer Fund 41506, CIP-46-193.0, Annual Allocation - Sewer Pooled Contingency, for the purpose of providing funds for the construction and related costs for Sewer Pump Station 45 - Rehabilitation [Project], provided that the City Auditor and Comptroller first furnishes one or more certificates certifying that the funds necessary for expenditure under established contract funding phases are, or will be, on deposit with the City Treasurer;

Authorizing an additional expenditure of an amount not to exceed \$200,000 from CIP-46-601.6, Sewer Pump Station 45 - Rehabilitation, for the purpose of providing funds for the acquisition of property rights and related costs necessary for the Project,

provided that the City Auditor and Comptroller first furnishes one or more certificates certifying that the funds necessary for expenditure under established contract funding phases are, or will be, on deposit with the City Treasurer;

Authorizing the City Auditor and Comptroller, upon advice from the administering department, to transfer excess budgeted funds, if any, to the appropriate reserves.

Subitem-B: (R-2003-1197)

Stating for the record that the information contained in the final Mitigated Negative Declaration, LDR-40-0840 including any comments received during the public review process, has been previously reviewed and considered by the Hearing Officer of the City of San Diego, and it is determined that no substantial changes or new information of substantial importance within the meaning of CEQA Guideline Section 15162 would warrant any additional environmental review in connection with approval of the construction of the Project;

Directing the City Clerk to file a Notice of Determination [NOD] with the Clerk of the Board of Supervisors for the County of San Diego regarding the Project.

NATURAL RESOURCES AND CULTURE COMMITTEE'S RECOMMENDATION:

On 3/5/2003, NR&C voted 5 to 0 to approve. (Councilmembers Zucchet, Lewis, Frye, Madaffer, and Inzunza voted yea.)

CITY MANAGER'S SUPPORTING INFORMATION:

Sewer Pump Station 45 is located on an existing easement at 9888 Salk Institute in the La Jolla and University City community areas. This project has been presented to the communities after each milestone of design and has been approved by both. Servicing the area since 1957, the pump station has reached its useful life and needs to be upgraded to current City standards. The scope of work includes demolishing existing SPS 28, SPS 29, and SPS 45; construction of a new SPS 45; replacing 2,500 feet of vitrified clay gravity sewer; and 5,460 feet of cast iron force main with 3,646 feet of new gravity sewer; and 12,260 feet of new force mains.

The advertising of this project was approved by the City Council on October 21, 2002. Nine (9) bid packages were received and opened on November 7, 2002. The low bidder was TC Construction, however, they withdrew their bid. Don Kelly Construction, Inc., was the next lowest bidder with a bidding amount of \$10,830,760, which is 2.76% higher than the engineer's estimate of \$10,540,279.

Council action is requested to provide additional funding of \$646,817 from CIP-46-601.6, Sewer Pump Station 45 -Rehabilitation. The additional funds requested cover additional construction, engineering, and property related costs.

FISCAL IMPACT:

The total cost of this project is \$14,396,511. Funding of \$13,749,694 was previously authorized by Council Resolution R-291242, R-294535, and R-297200. This action is authorizing an additional expenditure of \$617,770 from Sewer Fund 41506, CIP-46-601.6, Sewer Pump Station 45 -

Rehabilitation, and \$29,047 from Sewer Fund 41506, CIP No. 46-193.0, Annual Allocation - Sewer Pooled Contingency. This project is scheduled to be phase funded over FY 2003 to FY 2005. Funds of \$617,770 are available in Sewer Fund 41506 CIP-46-601.6, Sewer Pump Station 45 - Rehabilitation and funds of \$29,047 are available in Sewer Fund 41506, CIP-46-193.0, Annual Allocation -Sewer Pooled Contingency, for this purpose.

COST OF PROPERTY RIGHTS:

Value of the property rights to be acquired: \$143,600; title, escrow, and labor fees: \$56,400; Total \$200,000. Appraisal: \$143,600 for real property rights by Gary L. Rasmuson, MAI, of Rasmuson Appraisal Services, as of July 12, 2002.

Loveland/Belock/HR

WWF-03-647.

**ADOPTION AGENDA, CONSENT ITEMS
RESOLUTIONS:**

* ITEM-106: Gregory Evans Knoll Day.

COUNCILMEMBER PETERS' RECOMMENDATION:

Adopt the following resolution:

(R-2003-1231)

Recognizing Gregory Evans Knoll for his outstanding, selfless service to his profession and his fellow San Diegans;

Proclaiming April 23, 2003, to be "Gregory Evans Knoll Day" in the City of San Diego.

**ADOPTION AGENDA, CONSENT ITEMS
RESOLUTIONS:**

* ITEM-107: La Jolla High School Men's Basketball Team Day.

COUNCILMEMBER PETERS' RECOMMENDATION:

Adopt the following resolution:

(R-2003-1232)

Commending Coach Rle Nichols and the La Jolla High School Men's Basketball Team;

Proclaiming April 24, 2003, to be “La Jolla High School Men’s Basketball Team Day” in the City of San Diego.

ADOPTION AGENDA, CONSENT ITEMS

RESOLUTIONS:

- * ITEM-108: National Beach Safety Week.

COUNCILMEMBER PETERS’ RECOMMENDATION:

Adopt the following resolution:

(R-2003-1233)

Proclaiming May 4 through May 10, 2003, as “National Beach Safety Week” in San Diego, and urging all residents to safely enjoy themselves at the beach.

ADOPTION AGENDA, CONSENT ITEMS

RESOLUTIONS:

- * ITEM-109: American Youth Soccer Organization (AYSO) Days.

COUNCILMEMBER INZUNZA'S RECOMMENDATION:

Adopt the following resolution:

(R-2003-1107)

Proclaiming May 23 - 26, 2003 as “American Youth Soccer Organization Days” in the City of San Diego.

ADOPTION AGENDA, CONSENT ITEMS

RESOLUTIONS:

- * ITEM-110: Proposal to Support/Oppose Certain 2003 State Legislation.

(See memorandum from Andrew Poat dated 3/28/2003.)

TODAY'S ACTION IS:

Adopt the following resolution:

(R-2003-1236)

Approving the recommendations contained in the Governmental Relations Department’s March 28, 2003 report, with the following changes:

1. Change AB 136 from “Oppose” to “Watch”, until the City receives additional information.
2. Change ACA 10 from “Watch” to “Support as Priority.”
3. Add AB 361 as a “Watch.”
4. Add language that seek amendments to any relevant current legislation to allow the Mayor to appoint an alternate representative to the San Diego River Conservancy.
5. Change AB 1690 from “Support” to “Watch.”
6. Change AB 222 from “Support” to “Strong Support.”
7. Change SB 40 from “Support” to “Strong Support.”

RULES, FINANCE AND INTERGOVERNMENTAL RELATIONS COMMITTEE’S RECOMMENDATION:

On 4/2/2003, Rules voted 3 to 0 to approve the recommendations contained in the Governmental Relations Department’s March 28, 2003 report with the following changes:

1. Take no position on AB 136 until we get further information (move from “Oppose” to “Watch”).
2. Support as a priority ACA 10 (move from “Watch” to “Support as Priority”).
3. Add AB 361 as a “Watch.”
4. Add language that seek amendments to any relevant current legislation to allow the Mayor to appoint an alternate representative to the San Diego River Conservancy.
5. Change AB 1690 from “Support” to “Watch.”
6. Indicate strong support for AB 222.
7. Indicate strong support for SB 40.

(Councilmembers Peters, Madaffer, and Mayor Murphy voted yea. Councilmember Inzunza not present. Councilmember Maienschein abstain.)

ADOPTION AGENDA, CONSENT ITEMS
RESOLUTIONS:

- * ITEM-111: Recommendation 8 Made by the Mayor’s Blue Ribbon Committee on Budget and Finance: Operating Efficiencies.

(See City Manager Report CMR-03-058)

TODAY’S ACTION IS:

Adopt the following resolution:

(R-2003-1235)

Supporting the City Manager’s recommendations set forth in City Manager Report No. 03-058 to adopt the following proposals regarding the City pursuing operational efficiencies:

1. Continue to operate the Zero-Based Management Review process.
2. Continue to prioritize City Services giving deference to higher priority needs.
3. Continue to operate the Optimization Program.
4. Identify and optimize critical Citywide and cross-departmental functions.
5. Explore opportunities to create an innovation fund to pay for projects that show exceptional promise for improved efficiency.
6. Continue to review department business plans to identify opportunities for improved efficiency.
7. Continue to operate under the Labor-Management Partnership - Bid to Goal agreements in the Water and Wastewater Departments.
8. Look for additional opportunities to implement Bid to Goal in other areas of the City as appropriate and as funding permits.
9. Continue to operate the Performance-Based Budgeting Program.
10. Continue to publish the Citizens' Budget Document.
11. Continue to conduct appropriate benchmarking efforts.
12. Continue to conduct an annual Resident Satisfaction Survey.
13. Continue to publish the annual Service Efforts and Accomplishments document.
14. Continue to implement Citywide Automation Projects as appropriate and as funding permits.

RULES, FINANCE AND INTERGOVERNMENTAL RELATIONS COMMITTEE'S RECOMMENDATION:

On 4/2/2003, RULES voted 5 to 0 (Councilmember Peters, Maienschein, Madaffer, Inzunza and Mayor Murphy voted yea) to support the City Manager's recommendations set forth in CMR-03-058. Adopt the proposal regarding the City pursuing operational efficiencies.

1. Continue to operate the Zero-Based Management Review process.
2. Continue to prioritize City Services giving deference to higher priority needs.
3. Continue to operate the Optimization Program.
4. Identify and optimize critical Citywide and cross-departmental functions.
5. Explore opportunities to create an innovation fund to pay for projects that show exceptional promise for improved efficiency.
6. Continue to review department business plans to identify opportunities for improved efficiency.
7. Continue to operate under the Labor-Management Partnership - Bid to Goal agreements in the Water and Wastewater Departments.
8. Look for additional opportunities to implement Bid to Goal in other areas of the City as appropriate and as funding permits.
9. Continue to operate the Performance-Based Budgeting Program.
10. Continue to publish the Citizens' Budget Document.
11. Continue to conduct appropriate benchmarking efforts.
12. Continue to conduct an annual Resident Satisfaction Survey.
13. Continue to publish the annual Service Efforts and Accomplishments document.
14. Continue to implement Citywide Automation Projects as appropriate and as funding permits.

ADOPTION AGENDA, CONSENT ITEMS
RESOLUTIONS:

- * ITEM-112: Recommendation 9 Made by the Mayor's Blue Ribbon Committee on Budget and Finance: Budget Principles.

(See City Manager Report CMR-03-060.)

TODAY'S ACTION IS:

Adopt the following resolution:

(R-2003-1234)

Supporting the City Manager's recommendation in City Manager Report CMR-03-060, to adopt the following changes to the existing budget principles, as recommended by the Blue Ribbon Committee and proposed by the City Manager:

1. Follow the City's existing Budget Principles.
2. Revise Budget Principle No. 2 - The General Fund Reserve should be maintained at a minimum of 3% of General Fund revenues, with the goal of bringing General Reserves to a level that is 7% of General Fund revenues, which includes the goal of bringing the General Fund Reserve to 5% of General Fund revenues within ten years (by Fiscal Year 2014). The General Fund Reserve should be increased by at least 10% of any General Fund revenue increase in excess of 2% in any fiscal year in which General Fund revenues increase by more than 2% over the prior year budgeted revenues, until the 5% goal is achieved.
3. Add Budget Principle No. 7 - Budget development should be guided by a long term, or strategic budget plan proposed by the City Manager and adopted by the City Council.
4. Add Budget Principle No. 8 - Once adopted, annual budgets should be amended only when urgency requires, and then by identifying specific funding sources for these new priorities.

RULES, FINANCE AND INTERGOVERNMENTAL RELATIONS COMMITTEE'S
RECOMMENDATION:

On 4/2/2003, RULES voted 4 to 0 to support the City Manager's recommendations in CMR-03-060 to adopt the changes to the existing budget principles as recommended by the Blue Ribbon Committee and proposed by the City Manager:

1. Follow the City's existing Budget Principles.
2. Revise Budget Principle No. 2 - The General Fund Reserve should be maintained at a minimum of 3% of General Fund revenues, with the goal of bringing General Reserves to a level that is 7% of General Fund revenues, which includes the goal of bringing the General Fund Reserve to 5% of General Fund revenues within ten years (by Fiscal Year 2014). The General Fund Reserve should be increased by at least 10% of any General Fund

revenue increase in excess of 2% in any fiscal year in which General Fund revenues increase by more than 2% over the prior year budgeted revenues, until the 5% goal is achieved.

3. Add Budget Principle No. 7 - Budget development should be guided by a long term, or strategic budget plan proposed by the City Manager and adopted by the City Council.
4. Add Budget Principle No. 8 - Once adopted, annual budgets should be amended only when urgency requires, and then by identifying specific funding sources for these new priorities.

(Councilmembers Peters, Maienschein, Inzunza and Mayor Murphy voted yea. Councilmember Madaffer not present.)

ADOPTION AGENDA, CONSENT ITEMS

RESOLUTIONS:

* ITEM-113: Nomination to the Centre City Development Corporation (CCDC) Board of Directors.

(See memorandum from Mayor Murphy dated 4/17/2003 with resumes attached.)

MAYOR MURPHY'S RECOMMENDATION:

Adopt the following resolution:

(R-2003-1250)

Nominating for election to the Centre City Development Corporation (CCDC) Board of Directors:

NOMINEE

Jennifer LeSar (Finance)
Harold "Gil" Johnson (Business-Finance)

NOMINATED BY

Mayor Dick Murphy
Mayor Dick Murphy

Re-electing Jennifer LeSar and Harold "Gil" Johnson to the Centre City Development Corporation (CCDC) Board of Directors, for terms ending May 1, 2006.

ADOPTION AGENDA, DISCUSSION, COMMITTEE ITEMS

COMMITTEE ON NATURAL RESOURCES, AND CULTURE, ORDINANCE TO BE INTRODUCED WITH RESOLUTION TO BE ADOPTED:

ITEM-150: Two actions related to Grading Activity on Sensitive Resources and Canyons.

(See City Manager Report CMR-03-071, CMR-01-274, & CMR-01-189; NR&C Actions dated 9/19/2001 & 5/16/2001; letter from Kevin J. Elliott dated 12/12/2001; letter from Todd Gillum dated 12/12/2001; letter from Bradford E. Barnum dated

12/10/2001; letter from Dave Erickson dated 12/10/2001; letter from David A. Potter dated 12/10/2001; letter from Matthew J. Adams dated 12/10/2001; letter from Scott Michaelis dated 12/10/2001; memorandum from Tina Christiansen & Marcia K. Samuels dated 5/11/2001; memorandum from Chair Madaffer dated 5/4/2001; Grading Activity on Sensitive Habitat and Canyons.)

TODAY'S ACTIONS ARE:

Adopt the resolution in subitem A and introduce the ordinance in subitem B.

Subitem-A: (R-2003-1180)

Directing the City Manager to continue implementing, as a priority, the following:

1. Pre-construction conferences.
2. Judicial enforcement actions for grading violations.
3. Assessing costs for field inspections, enforcement and monitoring services against the violators.
4. Enforcing Land Development Code provisions prohibiting future development permit processing until conclusion of enforcement actions.
5. Utilizing the Grading Violation Assessment Team as the “coordination vehicle” for handling grading violations.
6. Utilizing enforcement measures against all culpable parties and to the maximum extent allowed by law, including reporting grading violations to the California Contractor’s Licensing Board.

Directing the City Manager to implement the following:

7. Training workshops for the City’s Administrative Hearing Officers to include environmental and historical land regulations.
8. Developing an education outreach program.
9. Posting fines collected from enforcement action on the Neighborhood Code Compliance web page on a quarterly basis.
10. Implementing a new, on-line, web-based project tracking system.
11. Creating an Administrative Penalty Schedule for Violations regarding Environmentally Sensitive Lands, Historical Resources and Paleontological Resources.

Subitem-B: (O-2003-133)

Introduction of an ordinance amending Chapter 1, Article 2, Division 8, of the San Diego Municipal Code by amending Sections 12.0803 and 12.0805, relating to administrative civil penalties.

NATURAL RESOURCES AND CULTURE COMMITTEE'S RECOMMENDATION:

On 12/12/2001, NR&C voted 4 to 0 to accept the City Manager's recommendations except on the issue of defendants assets, liabilities and net worth to be decided by the City Council. Refer deletion of the word natural in the term natural hillside and the issue of geotechnical testing to the Land Use and Housing Committee for further review and recommendation. Direct staff to continue to work with Dave Potter and community members to refine proposals before final review and approval by the City Council. (Councilmembers Peters, Zucchet, Frye, and Madaffer voted yea. Councilmember Inzunza not present.)

ADOPTION AGENDA, DISCUSSION, OTHER LEGISLATIVE ITEMS
RESOLUTION:

ITEM-200: Adoption of an Amendment to the Progress Guide and General Plan and the Sorrento Hills Community Plan.

Matter of approving, conditionally approving, modifying or denying the proposed amendment to the Progress Guide and General Plan and the Sorrento Hills Community Plan to change the name of the plan area from Sorrento Hills to Torrey Hills.

(Sorrento Hills Community Plan Area. District-1.)

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2003-1125)

Adoption of a Resolution approving the amendments to the Progress Guide and General Plan and Sorrento Hills Community Plan to change the community plan area name from Sorrento Hills to Torrey Hills.

OTHER RECOMMENDATIONS:

Planning Commission on October 24, 2002, voted 6 - 0 to approve; no opposition.

Ayes: Brown, Steele, Anderson, Lettieri, Chase, Garcia
Not present: Schultz

The Sorrento Hills Community Planning Board, on September 18, 2001, voted 9-1-0 to recommend that the community plan area name be changed from Sorrento Hills to Torrey Hills.

SUPPORTING INFORMATION:

On February 5, 2002, the City Council initiated a plan amendment to the Progress Guide and General Plan and the Sorrento Hills Community Plan to change the name of the plan area from Sorrento Hills to Torrey Hills (R-296044).

The “Sorrento Hills” name originates with the first community plan which was adopted in 1983. The 1983 community plan designated the majority of the community for industrial uses. The primary goal of the plan was to complement adjacent industrial land uses and serve as an employment center for the residential communities of north San Diego. The area was viewed as an extension of the industrially designated portion of the Torrey Pines community within Sorrento Valley to the west. Subsequent plan amendments in 1994, 1997 and 1998 have transformed the land uses in the community from an industrial employment center for the region into a predominately residential area.

The reference to the “Torrey Hills” name originates with the 1997 plan amendment processed concurrently with the Torrey Hills Planned Residential Development and Planned Industrial Development by the master developer of the community. The Torrey Hills subdivision consists of 79% of the land area of the community and is primarily residential. The developer and residents have used the Torrey Hills name in reference to this area. Consequently, the residents identify more with the name of Torrey Hills which they feel relates more to the nearby residential communities of Torrey Pines and Carmel Valley than to the Sorrento Valley industrial area.

At the request of the planning board the City Council initiated this plan amendment on February 5, 2002. The plan amendment proposes to change the name of the community plan area from Sorrento Hills to Torrey Hills. On October 24, 2002, the Planning Commission recommended approval by a vote of 6-0. All references in the plan to Sorrento Hills will be deleted and replaced with the new name. There are no other proposed changes to the text or graphics in the plan other than the name. The new name will be incorporated into future printed plans and all other documents and maps will be revised to reflect the new name.

FISCAL IMPACT:

Community Plan processing costs associated with staff time were included in the Planning Department work program for FY03 pursuant to City Council direction.

Ewell/Goldberg/ETN

NOTE: This activity is exempt from the California Environmental Quality Act pursuant to State CEQA Guidelines Section 15061(b)(3).

ADOPTION AGENDA, DISCUSSION, HEARINGS

SPECIAL HEARING:

ITEM-201: Conference with Real Property Negotiator, pursuant to California Government Code Section 54956.8:

Property: Qualcomm Stadium

Agency Negotiator: Assistant City Attorney Leslie J. Girard, Deputy City Manager Bruce Herring, Paul Jacobs, Esq., Daniel S. Barrett, and Robert Kheel.

Negotiating Parties: City of San Diego and the San Diego Chargers

Under Negotiation: Real Property Interests at the Qualcomm Stadium site pursuant to the recommendations of the Citizens Task Force on Chargers Issues, and pursuant to the terms of Paragraph 31 of the 1995 Agreement for the Partial Use and Occupancy of Qualcomm Stadium.

Prior to Council discussion in Closed Session and in compliance with the Brown Act, (California Government Code Section 54956.8) this item is listed on the docket **only** for public testimony.

There is no Council discussion of this item. The City Council's actions are:

1) Open the Public Hearing and accept testimony from any members of the public wishing to address the Council on this subject; 2) Conclude and close the public hearing; and 3) Refer the matter to Closed Session on April 29, 2003.

NOTE: Members of the public wishing to address the Council on this item should speak "in favor" or "in opposition" to the subject.

PUBLIC NOTICE:

Items are listed under Public Notice as a matter of public record only. These items do not require Council action and there is no public testimony.

ITEM-250: Notice of Completion and Acceptance of Subdivision Improvement Agreement.

Notice is hereby given that the City Manager of the City of San Diego intends to file a "Notice of Completion and Acceptance of Subdivision Improvement Agreement" indicating that the improvements included in the Subdivision Improvement Agreement have been satisfactorily completed for the following subdivisions:

SUBDIVISION

Scripps Gateway Townhomes
Scripps Gateway Unit No. 2

COMMUNITY AREA

Miramar North Ranch
Miramar North

The certification shall be recorded 15 days after the date this notice appears on the Council Docket or shortly thereafter. If any person wishes to object to the filing of this notice, such person should communicate the objection on or before that date to the Director or Planning and Development Review or to the Subdivision Engineer, City

Operations Building, 1222 First Avenue (MS 507), San Diego, CA 92101.

NON-DOCKET ITEMS

ADJOURNMENT IN HONOR OF APPROPRIATE PARTIES

ADJOURNMENT



THE CITY OF SAN DIEGO **MANAGER'S REPORT**

DATE ISSUED: December 5, 2001 REPORT NO. 01-274

ATTENTION: Council Committee on Natural Resources and Culture
Agenda of December 12, 2001

SUBJECT: GRADING ACTIVITY ON SENSITIVE HABITAT
AND CANYONS

REFERENCE: Christiansen / Samuels memorandum dated May 11, 2001;
NR&C meetings of May 16, 2001 and September 19, 2001

SUMMARY

Issues - Should the Committee direct the City Manager to:

- a) Proceed to City Council with a series of modifications to the Municipal Code and modifications to procedures relating to enforcement and reporting of grading violations; and
- b) Establish an educational outreach program for contractors and property owners adjacent to canyons and sensitive habitat areas.

Manager's Recommendations - Direct the City Manager to proceed with Item a as proposed in Attachments 2 and 3 and implement procedural modifications; and implement Item b, the outreach program.

Other Recommendations - Per the direction of the Committee, this report's recommendations in draft form were forwarded to all interested parties who attended the meeting of September 19, 2001. Changes were made to the report based on citizen input received before the publication date.

Fiscal Impact - While additional enforcement of grading violations has in some part been absorbed by modifying department operations, workload increases to enforce grading violations have displaced other priority cases. Based on the level of enforcement activity experienced following the adoption of these new regulations, additional staff (Neighborhood Code Compliance Land Development Investigator, Deputy City Attorney, Development Services Biologist I, Associate Engineer) may be requested in FY 2003 if the continued increase in workload merits such a request.

BACKGROUND

On May 16, 2001, representatives from the Development Services and Neighborhood Code Compliance Departments appeared before the Committee in response to an inquiry received from Council member Madaffer relating to City policies regarding unapproved grading in sensitive habitat areas and canyons. Following the staff response, public testimony, and discussion by the Committee, staff was directed to return with a range of policy options for the Committee to consider. On September 19, 2001, the following staff recommendations were accepted:

- ▶ An increase in the maximum limit for Administrative Civil Penalties to \$250,000;
- ▶ Secure the services of an Administrative Hearing Officer that has expertise in environmental and historical regulations;
- ▶ Continue the use of Judicial Actions to enforce grading violations;
- ▶ Routinely assess costs for field inspection and monitoring services and make these costs the responsibility of the violator;
- ▶ Enforcement of the Land Development Code (Section 143.0112) prohibiting future development permit processing until conclusion of enforcement actions;
- ▶ Increased enforcement measures against contractors, subcontractors, and equipment operators including: requirement that approved permits and plans be kept at the work site; and reporting of grading violations to the State Contractors Licensing Board;
- ▶ Implementation of an “after hours” reporting system by the Neighborhood Code Compliance Department;
- ▶ Creation of the Grading Violation Assessment Team (G-VAT) as the coordination vehicle for handling grading violations; and
- ▶ Educational outreach program including: development of an informational brochure and video; addition of grading information on the City’s web site;

articles in community newspapers and the Union Tribune on grading and development in sensitive areas; and outreach to equipment rental companies and home improvement stores. In addition staff recommends distributing the brochure to engineering firms, to surrounding cities, and to agencies that routinely perform grading activity in San Diego (e.g., CalTrans, County Water Authority, etc.).

On September 19th, the Development Services and Neighborhood Code Compliance Departments were also directed to return to the Committee with a follow-up report considering:

- A. The proposed language changes to the Land Development Code as listed in Clairemont Mesa Planning Committee's September 18, 2001 letter (Attachment A and Supplement to Attachment C);
- B. Mandatory minimum penalties and non-discretionary fines for large scale grading violations, including delineated penalties that quantify extent and amount of damage;
- C. Analysis of collecting penalty fees at the completion of enforcement actions and potential future allocations for those fines collected;
- D. Pursue the proposed educational program by City staff with sufficient outreach to building contractors and to look at the potential for preconstruction conferences;
- E. Several alternatives for establishing an Open Space Division within Park and Recreation, Planning, or another department;
- F. Thorough analysis of the City operations and past practices of collecting fines regarding Environmentally Sensitive Lands;
- G. Delete the word "natural" in reference to the determination of the sensitive slope gradient;
- H. Address issues of strict liability and mandatory minimum, and also the mandatory requirement for the "Director" to consider all possible circumstances in reaching his/her decision as referenced in Joanne Pearson's September 19, 2001 letter; and
- I. Full cost recovery for investigations by City departments.

DISCUSSION

A. Proposed Language Changes to Land Development Code (Reference Clairemont Mesa Planning Committee's September 18, 2001 letter, Attachment A).

Staff has evaluated the Clairemont Mesa Planning Committee's suggested changes to the Land Development Code and has prepared individual responses to each suggestion in Attachment 1. In general, the issues addressed by the Planning Committee's comments are either already addressed by the current code or do not warrant amendments for the reasons noted. Of the suggested changes, staff supports the provision that the City Manager may require mitigation for land designated as open space and/or in a Multi-Habitat Planning Area (MHPA) as a result of illegal grading activities if sensitive resources are impacted. These changes to the Land Development Code could be added in the next update process anticipated within the next six months.

B. Mandatory Minimum Penalties and Non-Discretionary Fines.

San Diego Municipal Code (SDMC) section 12.0805 (d) which authorizes the imposition of Administrative Civil Penalties for violations of the Municipal Code states:

“The City Manager has the authority to establish a penalty schedule for a Director to use as a guideline in determining the amount of civil penalties in appropriate cases. The Manager shall also establish procedures for the use of this schedule.”

Attachment 2 includes the proposed modifications to the factors utilized in the administrative civil penalties determination under Section 12.0805 (c) of the San Diego Municipal Code.

Attachment 3 represents a proposed penalty schedule drafted by City staff for grading violations. The proposed schedule takes into consideration the extent of the violations and the amount of damage incurred. The penalty schedule may be filed with the City Clerk and revised or updated as appropriate. These penalties would apply to both public and private projects.

On a quarterly basis, the Neighborhood Code Compliance Department will publish the amount of fines collected for enforcement actions on the department's web site. This information is currently not readily available but can be easily tabulated in the future.

C. Collecting Penalty Fees at the Completion of Enforcement Actions.

Judicial and administrative civil penalties collected in code enforcement actions are required by the Municipal Code to be deposited in the “Civil Penalties Fund” pursuant to SDMC section 13.0402. This fund was established in 1993 “for the enhancement of the City's code enforcement efforts and to reimburse City Departments for investigative costs and costs associated with the hearing process that are not paid by the Responsible Person.”

D. Proposed Educational Program with Sufficient Outreach to Building Contractors/
Potential for Preconstruction Conferences.

In the September 19th report to the Natural Resources and Culture Committee, Development Services outlined a series of outreach efforts to ensure that both contractors and the general public would be made aware of new regulations pertaining to the disturbance of sensitive areas.

Development Services has also implemented pre-construction conferences with customers. During the last two years, over 50 have been conducted. These pre-construction conferences are required as part of the implementation of Mitigation, Monitoring and Reporting Programs (MMRP) applied to projects which have undergone discretionary review. The pre-construction conferences, scheduled prior to any grading, alert the developer and the contractor of sensitive resources on site. Participants in the pre-construction conference will define the contractor's responsibilities and the parameters of the work the contractor is to complete. This will help to ensure that these resources are properly protected and preserved during the grading and development of the site.

As part of implementation of a new, on-line, web-based project tracking system in Development Services, key information will be collected and maintained on the system for all permit applications, including grading permits. One of the new features of the system will provide a property owner, developer, or community member the ability by phone to interface with the new system to get information about any project. With this new system, anyone that has a project address, project number, applicant name, or project name will be able to obtain:

1. A list of the City review staff involved in the project.
2. The status of the overall project review process, including if a permit has been issued.
3. The status of any hearing, if the project requires one, along with when the hearing was noticed and what the hearing decision was.
4. The application expiration date and detailed information about each discipline review.

E. Several Alternatives for Establishing an Open Space Division within Park and Recreation, Planning, or Other Department.

The Park and Recreation Department will address this issue in a separate report to be presented to the NR&C Committee.

F. Thorough Analysis of City Operations and Past Practices of Fine Collection Regarding Environmental Lands.

Enforcement of illegal grading violations was not aggressively pursued in the past as a matter of routine. Past practices and operations included issuing Notices of Violation and obtaining voluntary compliance.

Judicial penalties are another type of penalty which are assessed for grading violations when the case is referred to the Code Enforcement Unit of the City Attorney's Office for prosecution. In civil actions, the prosecutor determines the amount of appropriate fine, based on the various causes of action pleaded in the complaint and applicable statutes. For example, where an "unfair business" cause of action is pleaded in a civil complaint, California Business and Professions Code Section 17206 lists a series of factors to be utilized in assessing an appropriate fine. These factors include: the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the misconduct, and the defendant's assets, liabilities, and net worth. If the prosecutor files a criminal action, each violation is charged as a misdemeanor pursuant to SDMC Section 12.0201. Each conviction of a misdemeanor is punishable by a maximum \$1000 fine and/or six months in jail.

The following are examples of cases which have been prosecuted by the City Attorney's Office:

1. *People v. Warmington Homes* - The City Attorney's Office filed a civil complaint in 1993 against a developer who had illegally dumped fill material and illegally graded on a site containing vernal pools. As part of an agreed settlement, the developer paid \$60,994 which represented the costs incurred by the City to restore and monitor the vernal pools. (The City selected a contractor to implement a five-year restoration plan which required removal of the fill, remediation work to repair the environmental damage, and restoration of the site to its original condition.) The defendant also paid \$15,000 to the City of San Diego for restitution and the monies were deposited in the City's Vernal Pool Mitigation Fund. In addition the defendant was required to pay \$11,063 to reimburse the City for investigation costs incurred.

2. *People v. Meraux* - The City Attorney's Office filed a civil complaint in 1996 against a private property owner who illegally graded and filled property he owned. The owner was not aware that the property contained vernal pools and the pools were damaged by the grading. A civil settlement was reached which allowed compensation for the destruction of the vernal pools by off-site mitigation. The real estate company who sold the defendant the property purchased environmental credits in the amount of \$45,000 on behalf of the defendant. The defendant also reimbursed the City for investigative costs in the amount of \$1,525.

This year a number of cases were referred to the City Attorney's Office for prosecution. As these cases are in litigation, it is not appropriate to discuss the details of each case.

G. Delete the Word "Natural" in Reference to the Determination of Sensitive Slope Gradient.

The deletion of the word "natural" in the definition of steep hillsides would have significant impacts to property owners proposing new development and redevelopment projects in the City of San Diego. The proposal would significantly increase the number of discretionary actions being processed without any assurance that additional sensitive resources would be protected. This proposal would also increase the cost of processing projects for the applicant and increase the processing time for many projects.

This modification to the definition of steep hillsides would also be a major policy shift in City regulations by restricting development in previously graded areas of the City. The City of San Diego has never had process restrictions or regulations aimed at protecting manufactured slopes. In addition, City policy documents, from Land Use Plans to the C-720 coastal maps, only regulate natural slopes.

The development of manufactured slopes is regulated should natural biological resources be present on these slopes, or should such slopes be proposed to be modified requiring a ministerial or discretionary grading permit. Biological resources would still be regulated under the City's Environmentally Sensitive Lands regulations and where manufactured slopes are coincident with natural slopes. In those circumstances, the restrictions on development of sensitive resources would limit the ability for new development to impact the slopes.

Staff, therefore, does not recommend changing the language as proposed.

H. Address Strict Liability and Mandatory Minimum, and Mandatory Requirement for the "Director" to Consider All Possible Circumstances in Reaching Decision (Reference Joanne Pearson Letter, September 19, 2001).

Illegal grading violations constitute strict liability offenses pursuant to the Municipal Code. Section 121.031 of the Land Development Code states that "Violations of the Land Development Code shall be treated as strict liability offenses regardless of intent." Code enforcement violations throughout the Municipal Code are similarly treated. This means that a property owner may be held liable for violations occurring on his or her property irrespective of intent, participation, or knowledge. Holding a property owner or violator strictly liable is consistent with caselaw. In *Leslie Salt Co. v. San Francisco Bay Conservation Comm.*, 153 Cal.App. 3d 605, 622 (1984), the court found the property owner responsible for violations of state environmental protection statutes even though some person, without the owner's permission or knowledge, dumped illegal materials on his property. California cases subsequent to this decision have similarly held property owners responsible for violations of ordinances protecting

the public's health, safety and welfare (Reference *People v. Bachrach*, 114 Cal App 3d Supp 8,12 (1980).

I. Full Cost Recovery for Investigations by City Departments.

The Municipal Code presently authorizes City departments to recover investigative costs. For example, SDMC Section 13.0103 authorizes the assessment of reinspection fees for services after the third inspection of a property after the issuance of a Notice of Violation. The reinspection fee schedule is on file in the City Clerk's Office pursuant to SDMC Section 13.0104. If an administrative civil penalty action is pursued for an illegal grading violation, SDMC Section 12.0806 authorizes that administrative costs incurred may also be assessed, e.g., costs for the scheduling and processing of a civil penalties hearing. If a judicial civil action is pursued by the City Attorney's Office, the civil complaint seeks costs incurred by City employees who have worked on the case. If a criminal action would be pursued by the City Attorney's Office, investigative costs may be recovered via a plea bargain agreement.

J. Permit Processing for Geotechnical Exploration. (*This item was not part of the Committee's September 19, 2001 discussion; however, it is presented here due to relevancy to the overall grading issue.*)

On November 26, 2001 during a meeting between City staff and concerned citizens, an issue was raised by the geotechnical consulting and building industries that the "permit to get a permit" process was burdensome both in added cost and time. They also expressed concern that the submittal requirements for a Site Development Permit were not fully understood by the geotechnical consulting industry. Furthermore, it was felt that revisions to the Land Development Code to establish a "geotechnical exploration permit" are needed.

The Land Development Code currently requires a Site Development Permit for geotechnical exploration on properties that contain historical resources or environmentally sensitive lands. Geotechnical exploration is most often aimed at determining development feasibility and the most appropriate areas of a site for development from a geotechnical perspective. Currently, the Land Development Code requires many proposed developments to obtain a Site Development Permit (Process Three, Process Four, or Process Five approval) to get sufficient geotechnical information prior to making a development proposal submittal as another discretionary action. This adds an approximate 4-6 month permit process in addition to the permit process required to secure a development approval.

In light of this, staff is considering Land Development Code amendments that would allow geotechnical exploration on properties with sensitive resources through a Process One or Two approval provided that strict conditions are met. The requirements of the CEQA process would also be evaluated. Conditions would include seasonal restrictions, monitoring by specialists such as a biologist or archaeologist, and implementation of a restoration and monitoring plan immediately following completion of site work to restore disturbed areas to previous conditions.

In the coming months, staff will be developing a proposal of new regulations that will be evaluated through the Land Development Code Update review process.

Until this issue is evaluated and resolved through the code update process, Development Services committed to: 1) involving the geotechnical industry and the environmental community as stakeholders in the code update process; 2) creating a submittal checklist/procedures bulletin for the geotechnical exploration permit processing; and 3) providing a training meeting specific to the geotechnical and building industries on the current code requirements as would be detailed in the bulletin.

SUMMARY OF RECOMMENDATIONS

In addition to the previous accepted recommendations from the September 19, 2001 NR&C Committee meeting as outlined in the Background section of this report, staff recommends:

- ▶ Revising Land Development Code Section 121.0312 (c) allowing the City Manager to consider mitigation for land designated as open space and/or in a Multi-Habitat Planning Area (MHPA) as a result of illegal grading activities if sensitive resources are impacted (reference Attachment 1).
- ▶ Modifying the factors utilized in the Administrative Civil Penalties determination under Section 12.0805 (c) of the San Diego Municipal Code (reference Attachment 2).
- ▶ Adopting the proposed Administrative Civil Penalty Criteria and Schedule for Violations Regarding Environmentally Sensitive Lands, Historical Resources and Paleontological Resources to the San Diego Municipal Code (reference Attachment 3).
- ▶ Quarterly posting of the fines collected from enforcement actions on the Neighborhood Code Compliance Department web page.
- ▶ Continuing pre-construction conferences.
- ▶ Implementing a new, on-line, web-based project tracking system.
- ▶ Retaining “natural” in the definition of steep hillsides.
- ▶ Implementing public input and outreach measures regarding geotechnical exploration.

CONCLUSION

In analyzing the Neighborhood Code Compliance Department's past handling of cases and in working with the Development Services Department, several general themes emerged. The enforcement remedies used in some cases did not provide for the most efficient and expeditious resolution of the grading violation. Additionally, the enforcement remedies did not always provide a disincentive to violate the Municipal Code from the onset. There has been some problems with coordination and in some cases conflicting information and direction to the property owner from numerous departments that can and do become involved in land development issues. This report provides recommendations which should minimize these problems by providing a team specifically to deal with complaints and violations. Increased penalties and modified procedures should also help to better protect environmentally sensitive lands in San Diego.

ALTERNATIVES

1. Do not modify the San Diego Municipal Code.
2. Adopt selected items from the Manager's list of recommendations.

Respectfully submitted,

Tina Christiansen, A.I.A.
Development Services Director

Marcia K. Samuels
Neighborhood Code Compliance Director

Approved: George I. Loveland
Senior Deputy City Manager

TPC/MKS/JWT

Attachments:

1. Responses to Attachment A of Clairemont Mesa Planning Committee Letter
Dated 18 September 2001
2. Determination of Civil Penalties
3. Proposed Civil Penalty Fee Criteria and Schedule

**City Staff Responses to Clairemont Mesa Planning Committee's (CMPC)
Recommended Revisions to Land Development Code for Purpose of Protecting Canyons,
Hillsides, Open Space and Other Environmentally Sensitive Lands
(Reference Discussion Item A)**

CMPC Suggested Revision:

§113.0103 Definitions

Steep hillsides means all lands that have a slope with a ~~natural~~ gradient of 25 percent (4 feet of horizontal distance for every 1 foot of vertical distance) or greater and a minimum elevation differential of 50 feet, or a ~~natural~~ gradient of 200 percent (1 foot of horizontal distance for every 2 feet of vertical distance) or greater and a minimum elevation differential of 10 feet.

Staff Response:

See response to Discussion Item G in report. Staff does not recommend changing the language as proposed.

CMPC Suggested Revision:

§121.0204 Authority to Report Violations

The City Manager or designated Code Enforcement Official ~~may~~ shall report violations of the Land Development Code to the State Contractors License Board or other appropriate state licensing or regulatory agency.

Staff Response:

The City intentionally uses the word “may” to allow discretion in reporting violations because it is not always appropriate. For instance, if the development is being completed by the owner (owner/builder who is a contractor), state law prohibits the City from reporting violations to the State Contractors License Board. Staff, therefore, does not recommend changing the language as proposed.

CMPC Suggested Revision:

§121.0312 Restoration and Mitigation as a Remedy

- (a) In addition to other enforcement remedies provided for in Municipal Code Chapter 1, the City Manager ~~may~~ shall order the reasonable restoration of a structure, premises, and any adjacent and affected site to its lawful condition or ~~may~~ shall require reasonable mitigation. These requirements ~~may~~ shall be attached as conditions to applicable permits or enforcement actions and orders as appropriate.
- (b) Any restoration or mitigation imposed by the City Manager or Building Official shall be at the sole cost of the responsible person.
- (c) Mitigation may be appropriate where the City Manager determines that restoration of the premises or adjacent site to its pre-existing condition is not feasible or that irreparable damage has been done to the premises, an environmentally sensitive land, ~~or~~ a historical structure, or any area designated as open space in an adopted community plan.
- (d) Mitigation may include the purchase or exchange of like-kind real property or structures of a similar or greater quality and value.
- (e) The City Manager or Building Official may require a combination of restoration and mitigation of the structure or premises if warranted by the circumstances.
- (f) The City Manager or Building Official may promulgate additional administrative guidelines and regulations to implement and clarify the authority to require restoration and mitigation.

Staff Response:

- (a) Changing the language as proposed would dictate that the City Manager's only remedy to a violation is mitigation or restoration. In some situations, a combination may be the best remedy. In addition, some violations require issuance of building permits or some other ministerial action and conditions, by law, may not be imposed on a ministerial action. Staff, therefore, believes that the language should not be changed.
- (c) Staff supports the change. See Discussion Item A in report.

CMPC Suggested Revision:

§126.0502 When a Site Development Permit Is Required

- (e) A Site Development Permit decided in accordance with Process Five is required for the following types of development.
- (1) In the Airport Approach Overlay Zone, *development* proposals that receive an FAA determination of hazard and that are not exempt, as described in Section 132.0202.
 - (2) In the Airport Environs Overlay Zone, *development* for which a City Council override is requested, as described in Section 132.0302.
 - (3) In the Clairemont Mesa Height Limit Overlay Zone, *development* for which an exception to the height limit is requested, as described in Section 132.1306.
 - (4) In any area designated as open space in an adopted community plan, any *grading or development*.

§142.0103 When a Permit Is Required for Grading

- (a) A Grading Permit is required for any grading work specified in Section 129.0602.
- (b) A Site Development Permit is required for any grading that results in the creation of a slope with a gradient steeper than 25 percent (4 horizontal feet to 1 vertical foot) and a height of 25 feet or more in accordance with Chapter 12, Article 6, Division 5 (Site Development Permits).
- (c) A Site Development Permit is required for any grading, (including clearing or grubbing) within any area designated as open space in an adopted community plan.

Staff Response:

- (4) Many areas of the City are designated as open space in community plans yet have zoning that would allow development consistent with regulations of the code. If significant resources such as slopes or biology are present, then the Site Development Permit would already be required. If no resources are present, other than base zone development regulations, the code does not have any regulations related to the fact that the community

plan designates the property as open space. Furthermore, if a community feels that an area designated as open space in a community plan should have development restrictions, then a rezoning request should be initiated to zone the property OR-1-1. This zone was created to implement community open space and limits encroachment on properties with that zoning designation. Staff, therefore, does not support making the suggested change.

CMPC Suggested Revision:

§142.0150 Unauthorized Grading

It is unlawful to do, cause to be done, or maintain any work covered under this Division without first obtaining a grading permit

The provisions of this Section shall apply to all persons who do, cause to be done, or maintain any work covered by this Division without benefit of a permit including:

- (a) Property owners or lessees;
- (b) Contractors who perform the work;
- (c) Drivers who transport fill material to the site or the excavated material from the site.

Compliance with the provisions of this Division shall be evidenced by the availability on the site of approved plans and a copy of a valid grading permit.

(Note: Proposed §142.0150 is verbatim §62.0403 that was rescinded when the Land Development Code was adopted by Ordinance Number O-18451 on December 9, 1997)

Staff Response:

These proposed additions are already sufficiently covered under the “Enforcement” Section of the LDC. Section 121.0302 (b) already states that it is illegal for “any person” (which includes all of those listed in the Committee’s letter) to grade, excavate, clear, fill, grub, build an embankment, construct slopes, or disturb sensitive natural or biological resources on any lot or premises. Staff, therefore, does not support the suggested revisions regarding enforcement. Staff does, however, support the requirement to make approved plans available on-site along with a copy of a valid grading or other construction permit.

CMPC Suggested Revision:

§142.0151 Site Restoration

Restoration of grading work undertaken without a permit is required and shall occur prior to any further development on the site. Restoration requires:

- (a) Submittal to and acceptance by the Permit Issuing Authority of a restoration plan which may include necessary monitoring by the City or a City designated party, both at the cost of the violator.
- (b) Obtaining a grading permit and receiving inspection approval from the Permit Issuing Authority; and
- (c) Compliance with any other reasonable requirements of the Permit Issuing Authority including those set forth in Section ~~62.0104(h)~~ of this Code.

(Note: Proposed §142.0151 is verbatim §62.0405 that was rescinded when the Land Development Code was adopted by Ordinance Number O-18451 on December 9, 1997)

Staff Response:

Staff believes that this information is sufficiently covered in Chapter 12, Article 9, Division 6 entitled Grading Permit Procedures and requires no changes to the code. Staff, therefore, does not recommend changing the language as proposed.

CMPC Suggested Revision:

§ 142.0152 Compliance with CEQA

No grading permit shall be issued without the final environmental document which addresses the proposed grading or a written statement from the Environmental Analysis Section certifying that the project is exempt from environmental review requirements in accordance with the California Environmental Quality Act.

(Note: Proposed §142.0152 is similar to §62.0410(h) that was rescinded when the Land Development Code was adopted by Ordinance Number O-18451 on December 9, 1997)

Staff Response:

Grading permits may be ministerial actions. Not all grading permits are discretionary actions. Under the California Environmental Quality Act (CEQA), ministerial actions are exempt from the requirement for CEQA review (Public Resources Code Section 21080 (b)(1)). Projects that required prior discretionary actions (including public projects) as a result of proposed impacts to sensitive biological resources, steep hillsides or historical resources (neighborhood development permits or site development permits) would have been subject to environmental review and, therefore, grading permits issued consistent with those previous actions and environmental documents are not subject to further review beyond a determination of compliance with approved permit conditions. Staff, therefore, does not recommend changing the language as proposed.

§12.0805 Determination of Civil Penalties

- (a) In determining the date when civil penalties started to accrue, a Director may consider the date when the Department first discovered the violations as evidenced by the issuance of a Notice of Violation or any other written correspondence.
- (b) The assessment of civil penalties shall end when all action required by the Notice and Order has been completed.
- (c) In determining the amount of the civil penalty to be assessed on a daily rate, a Director may consider some or all of the following factors:
 - (1) The duration of the violation.
 - (2) The frequency or recurrence of the violation.
 - (3) The *nature and* seriousness of the violation.
 - (4) The history of the violation.
 - (5) *Whether the offense impacted environmentally sensitive lands or historical resources.*
 - (6) *The willfulness of defendant's misconduct.*
 - (7) *Defendant's assets, liabilities and net worth.*
 - (8) The Responsible Person's conduct after issuance of the Notice and Order.
 - (9) The good faith effort by the Responsible Person to comply.
 - (10) The economic impact of the penalty on the Responsible Person.
 - (11) The impact of the violation upon the community.
 - (12) Any other factors that justice may require.
- (d) The City Manager has the authority to establish a penalty schedule for a Director to use as a guideline in determining the amount of civil penalties in appropriate cases. The Manager shall also establish procedures for the use of this penalty schedule.

NOTE: Italics represents proposed modifications to the current Municipal Code.

**Proposed Civil Penalty Criteria and Schedule for Violations
Regarding Environmentally Sensitive Lands, Historical Resources
and Paleontological Resources**

PROPOSED FINE SCHEDULE:

I. SENSITIVE BIOLOGICAL RESOURCES

RESOURCES IMPACTED/DESTROYED MINIMUM CIVIL FINE

Wetlands

Vernal Pool	\$20,000
Coastal Wetlands (salt marsh, salt panne)	\$20,000
Riparian Habitats (oak riparian forest, riparian forest, riparian woodland, riparian scrub)	\$15,000
Freshwater Marsh	\$15,000
Disturbed Wetland (excluding vernal pool)	\$10,000
Marine Habitats/Eelgrass Beds	\$5,000

Uplands

Tier I - Rare Uplands	\$20,000
(Maritime Succulent Scrub, Maritime Chaparral, Native Grassland, Oak Woodlands, etc.)	
Tier II - Uncommon Uplands	\$15,000
(Coastal Sage Scrub (CSS), CSS/Chaparral, etc.)	
Tier IIIA and IIIB – Common Uplands	\$10,000
(Mixed Chaparral, Chamise Chaparral, Non-native Annual Grassland, etc.)	

Endangered Species

Impacts to individual endangered species not covered by the MSCP Subarea Plan	\$20,000*
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* This fine would be considered and imposed only following consultation with the U.S. Fish & Wildlife Service and the California Department of Fish & Game.

II. OTHER ENVIRONMENTALLY SENSITIVE LANDS (Steep Hillsides, Coastal Beaches, Sensitive Coastal Bluffs, and 100-Year Floodplains)

Disturbance of Environmentally Sensitive Lands lacking sensitive biological resources and without a permit \$5,000

Disturbance of Environmentally Sensitive Lands lacking sensitive biological resources that exceeds permitted encroachment \$5,000

III. HISTORICAL AND PALEONTOLOGICAL RESOURCES

Disturbance of archaeological or paleontological resources without a permit \$5,000

NOTE: These fines are assessed pursuant to San Diego Municipal Code Section 12.0805, and may vary depending on the twelve factors listed in Section 12.0805 (c) which the Director may consider in assessing a daily fine.

PENALTY CRITERIA:

Once the minimum civil fine for impacts to environmentally sensitive lands, historical resources, and paleontological resources is determined from the civil fine schedule listed above, the total fine or penalty for individual Illegal Grading Violations would be assessed using the following minimum criteria (maximum penalty not to exceed \$250,000):

1. Size of the impacted area (acreage/square footage);
2. Extent of direct and indirect impacts on-site;
3. Extent of direct and indirect impacts off-site;
4. Type of habitat affected;
5. Quantity of habitat affected;
6. Quality of habitat affected (connectivity to wildlife corridors, etc.);
7. Presence of federal or state listed species or narrow endemics;
8. Extent of encroachment into a Multi-Habitat Planning Area (MHPA);
9. Presence and significance of cultural resources (historic and prehistoric);
10. Presence of paleontological resources;
11. Geological stability of the impacted area;
12. Soil contamination;
13. Existing and surrounding land use;
14. Visibility – landform alteration.

This assessment shall include a discussion of the development potential/eligibility of the site, feasibility and extent of on- or off-site mitigation; restoration; or remediation measures.

ADMINISTRATIVE FINES:

Appropriate fines are levied along with immediate implementation of erosion control measures (if applicable) and a restoration and monitoring plan. The minimum fine for the Administrative Civil Penalty ranges between \$2,500 and \$25,000 per day per violation. The maximum penalty would not exceed \$250,000. In addition, the violator would automatically be subject to the costs associated with enforcement action, the cost of restoration, mitigation and monitoring as well as for preparing any and all reports and plans (e.g., biological resources report, historical resources report, revegetation plan, grading plan, erosion control plan) required to be submitted in conjunction with correcting the violation and restoring the site to previous conditions, if applicable. The applicant can only submit for development permits after the enforcement action has been complete.



THE CITY OF SAN DIEGO
MANAGER'S REPORT

DATE ISSUED: March 28, 2003 **REPORT NO.** 03-060

ATTENTION: The Committee on Rules, Finance and Intergovernmental Relations

SUBJECT: City Manager's Proposal Regarding Budget Principles

REFERENCE: Blue Ribbon Committee Report on City of San Diego Finances – February 2002

Memorandum from Mayor Murphy to San Diego City Council on Blue Ribbon Committee Recommendations/Rules Committee Actions – April 4, 2002

SUMMARY

Issue - Should the Committee on Rules, Finance and Intergovernmental Relations adopt the following recommendations regarding budget principles as recommended by the Blue Ribbon Committee Report and proposed by the City Manager?

1. Follow the City's existing Budget Principles.
2. Revise Budget Principle #2 – The General Fund Reserve should be maintained at a minimum of 3% of General Fund revenues, with the goal of bringing General Reserves to a level that is 7% of General Fund revenues, which includes the goal of bringing the General Fund Reserve to 5% of General Fund revenues within 10 years (by Fiscal Year 2014). The General Fund Reserve should be increased by at least 10% of any General Fund revenue increase in excess of 2% in any fiscal year in which General Fund revenues increase by more than 2% over the prior year budgeted revenues, until the 5% goal is achieved.

3. Add Proposed Budget Principle #7: Budget development should be guided by a long term, or strategic budget plan proposed by the City Manager and adopted by the City Council.
4. Add Proposed Budget Principle #8: Once adopted, annual budgets should be amended only when urgency requires, and then by identifying specific funding sources for these new priorities.

Manager's Recommendation - Adopt the following changes to the existing budget principles as recommended by the Blue Ribbon Committee and proposed by the City Manager:

1. Follow the City's existing Budget Principles.
2. Revise Budget Principle #2 – The General Fund Reserve should be maintained at a minimum of 3% of General Fund revenues, with the goal of bringing General Reserves to a level that is 7% of General Fund revenues, which includes the goal of bringing the General Fund Reserve to 5% of General Fund revenues within 10 years (by Fiscal Year 2014). The General Fund Reserve should be increased by at least 10% of any General Fund revenue increase in excess of 2% in any fiscal year in which General Fund revenues increase by more than 2% over the prior year budgeted revenues, until the 5% goal is achieved.
3. Add Budget Principle #7: Budget development should be guided by a long term, or strategic budget plan proposed by the City Manager and adopted by the City Council.
4. Add Budget Principle #8: Once adopted, annual budgets should be amended only when urgency requires, and then by identifying specific funding sources for these new priorities.

Other Recommendations – None.

Fiscal Impact – The fiscal impact of adhering to revised Budget Principle #2 in Fiscal Year 2004, assuming a conservative increase of 2% in General Fund revenues, would require a minimum increase to the General Fund Reserve of approximately \$900,000 to maintain the General Fund Reserve at 3% of General Fund revenues. The fiscal impact of adding Proposed Budget Principle #7 is unknown as the scope of the strategic budget plan has not yet been defined. There is no fiscal impact associated with adding Proposed Budget Principle #8.

BACKGROUND

During Fiscal Year 1998, the City Manager proposed and the Rules Committee conceptually endorsed the existing six principles of budgeting and finance. The principles were first used in developing the budget in Fiscal Year 1999.

As endorsed by the Rules Committee, the six budget principles currently being used in the fiscal year budget development are:

1. Ongoing expenditures should be supported by ongoing revenues. Accordingly, onetime revenues should not be used for ongoing expenditures on a continuous basis.
2. [As revised by City Council, October 14, 2002] The General Fund Reserve should be maintained at a minimum of 3% of the General Fund revenues with the goal of bringing General Reserves to a level that is 7% of General Fund revenues, which includes the goal of bringing the General Fund Reserve to 5% of General Fund revenues within 10 years (by Fiscal Year 2014). The General Fund Reserve should be increased by at least 10% of the General Fund revenue increase in excess of 2% in any fiscal year in which General Fund revenues increase by more than 2% over the prior year budgeted revenues until the 5% goal is achieved.
3. When capital projects are considered, all associated costs should be identified in order to properly assess future financial impacts.
4. Each enterprise fund should reflect the true cost of operation, including direct and indirect costs of services provided by the General Fund.
5. Activities that are supported by user fees should be fully cost recoverable.
6. Discretionary General Fund revenues should not be earmarked, thereby allowing maximum flexibility in funding decisions on an annual basis.

The Blue Ribbon Committee Report recommended that “the City should follow its existing six budget principles and add two additional budget principles:

Proposed Budget Principle #7: Budget development should be guided by a long term, or strategic budget plan proposed by the Manager and adopted by the Council.

Proposed Budget Principle #8: Once adopted, annual budgets should be amended only when urgency requires, and then by identifying specific funding sources for these new priorities.”

The Blue Ribbon Committee Report supports the existing six budget principles. The report recommended revising Budget Principle #2: *the General Fund Reserve should be maintained at approximately three percent*, to reflect that the General Reserves be maintained at 7% to 10%. On October 14, 2002 the City Council adopted a proposal to maintain the General Fund Reserve at a minimum of 3% of General Fund revenues and establish a goal to bring the General Fund Reserve to 5% of General Fund revenues within 10 years (by Fiscal Year 2014). The Council also adopted a proposal to establish a goal of maintaining the General Reserves to a level that is 7% of General Fund revenues.

In regard to Proposed Budget Principle #7, the Blue Ribbon Committee Report stated:

Addressing large capital project needs and long-term population growth require the City to have a multiple year approach to providing and funding municipal services. Development of a strategic plan for the City of San Diego would help citizens and their elected representatives better understand the public policy choices and investments required to maintain our quality of life, and offers an

assurance that important long-term priorities are not lost among urgent year to year decision making. Further, strategic plans offer all parties an important opportunity to debate what San Diego should look like in the future years. For purposes of better framing important public policy decisions, identifying long term City service and revenue needs, assuring attention to long term priorities, and accomplishing the highest and best uses of City tax dollars, the Committee calls on the City Manager to prepare, and the Mayor and Council to adopt, a San Diego Fiscal Strategic Plan.

The Blue Ribbon Committee Report also mentioned the benefits of a long term strategic plan with regard to Budget Principle #3: *When capital projects are considered, all associated costs should be identified in order to properly assess future financial impacts*, and Budget Principle #6: *Discretionary General Fund revenues should not be earmarked, thereby allowing maximum flexibility in funding decisions on an annual basis*.

In regard to Proposed Budget Principle #8, the Blue Ribbon Committee Report stated:

Sound financial and organizational management techniques dictate that once adopted, budgets should be changed only when urgently needed. When urgent circumstances, such as natural disasters or unforeseen economic slumps occur, it is imperative that specific funding be identified to accompany new priorities. Without such clarity, the legal obligation to provide a balanced budget cannot be honored, nor can spending priorities be recalibrated in the public setting taxpayers deserve. The Committee also notes that frequently changing priorities can increase the cost of City administration.

In a memorandum from Mayor Murphy to the City Council on Blue Ribbon Committee Recommendations/Rules Committee Actions dated April 4, 2002, the Mayor directed the City Manager to prepare a proposal to the Committee on Rules, Finance and Intergovernmental Relations to adopt the Blue Ribbon Committee Report recommendation to follow the City's existing six budget principles and add the two additional budget principles.

DISCUSSION

With the exception of the Library Ordinance's impact on Budget Principle #6 (City Manager shall propose that the Library receive a budget that is equal to incrementally increasing percentages of the General Fund budget until it reaches 6% in Fiscal Year 2005), the Blue Ribbon Committee Report found that the existing six budget principles are being followed. The only change suggested in the Blue Ribbon Report was to Budget Principle #2, which was revised by the City Council on October 14, 2002.

Proposed Budget Principle #7: Budget development should be guided by a long term, or strategic budget plan proposed by the Manager and adopted by the Council.

The Government Finance Officers Association (GFOA) has endorsed the recommended practices for state and local budgeting developed by the National Advisory Council of State and Local Budgeting (NACSLB) in *Recommended Budget Practices: A Framework for Improved State and Local Government Budgeting*. Among these recommended budget practices is development of a

long term, or strategic budget plan. The GFOA recommends the establishment of broad goals to guide government decision-making, development of management strategies and the budget in a manner which allows government to achieve long-range goals, and development of a long-range financial plan to ensure that programs, services, and projects are affordable in the future. Long-range financial plans and projections should be developed, updated, and reviewed, and those plans and projections should be used to guide the budget-development decision-making process.

One of the GFOA's examples of this budget principle is the City of Glendale, Arizona's Strategic Financial Plan. The purpose of Glendale's Strategic Financial Plan is to identify financial mechanisms to respond to revenue fluctuations with minimal impact on service level and quality. The intention is to respond proactively to financial changes and be as prepared as possible to deal with the unexpected. The city's Strategic Financial Plan includes both long and short-term strategies to maximize the city's flexibility in responding to change. Long-term strategies include adjusting staff levels and alternatives to permanent staff increases, equalizing predictable expenses over multiple budget years, and capital improvement plan schedule development. Short-term strategies include sales tax stabilization, operating capital management, and building and maintaining adequate contingency reserves. Development of the Strategic Financial Plan includes using a computer simulation model to analyze the potential impacts of different variables on the city's financial stability as well as evaluate the benefits and shortcomings of possible long and short-term strategies. The Strategic Financial Plan is updated annually and is used in conjunction with the city's Five-Year Forecast and Glendale Financial Policies to guide budget development.

One of the benefits of a strategic budget plan is in having established priorities to assist in budget-related decision-making. Discussion of budget priorities would take place in a public forum, allowing citizens and the Mayor and City Council to assess long-term goals for the City. These priorities would aid the City Manager in preparing the proposed budget, and aid the Mayor and City Council in adopting the final budget, by following the priorities and future budget requirements established in the strategic budget plan.

Additionally, a strategic budget plan would emphasize the projection of future revenues versus future expenditures. Projections would take into account future needs based on population growth as well as spending priorities. A comparison of projected revenues to anticipated expenditures would help the City to be proactive in dealing with future cash flow problems. Projected revenue shortfalls and/or expenditure deficits could be addressed earlier in the budget process. Alternative sources of revenue could be discussed and implemented before the shortfall occurs to avoid expenditure cuts. Conversely, expenditures could be evaluated and resources reallocated to meet priorities in lieu of increasing revenues.

The City of San Diego is already utilizing several strategies and processes that reflect the intent of Proposed Budget Principle #7, while retaining the decision-making flexibility that is required due to the dynamic nature of both the City itself and its revenue sources.

On October 22, 2002, the City Council adopted the Strategic Framework Element as an update to the General Plan. The Strategic Framework Element represents the City's new approach to shaping the growth of the City; as such, any new programs, enhancements to existing services, or new development must be consistent with the Strategic Framework.

The City's Capital Improvements Program Budget is an eleven-year budget, which provides a long-range perspective on the City's capital improvement plans, as well as identifying unfulfilled funding requirements well into the future. This enables City management to view planned future capital expenditures and adjust as necessary to meet anticipated City needs, as well as giving them the ability to strategize for future funding requirements well in advance of project initiation.

A five-year expenditure forecast is completed for each department as part of the Operating Budget. The five year expenditure forecast includes an inflation rate as well as adjustments based on departments' specific needs into the future.

The Mayor's 10 Goals and the priorities of each City Councilmember are used to set budget priorities. Additional input for the budget is provided by the Mayor and City Council at budget workshops prior to establishment of the proposed budget. Citizen input is provided through continuous departmental customer surveys and Community Budget Forums where the City Manager and Council Members discuss the budget with various community groups.

While a strategic budget plan can focus attention on future issues, it is best as a high-level, flexible plan for the future due to unanticipated situations that could adjust priorities. Revenue and expenditure projections cannot be 100% accurate. In the past three budget cycles, unanticipated events, such as the energy crisis and the revenue and expenditure impacts which resulted from the tragedy of September 11, 2001, caused a shift in priorities. None of these issues could have been addressed in a strategic budget plan.

Proposed Budget Principle #8: Once adopted, annual budgets should be amended only when urgency requires, and then by identifying specific funding sources for these new priorities.

This proposed budget principle is already being followed although not as an official budget principle. Mid-year adjustments to the operating budget, including changes to appropriations and the number of budgeted positions, require that City Council pass an ordinance to amend the Annual Appropriation Ordinance. An ordinance requires a 2/3 vote of the City Council. Mid-year adjustments to operating budgets and/or budgeted positions are usually related to emerging Council priorities or mandates.

Adjustments to the Capital Improvements Program (CIP) Budget require that City Council pass a resolution, which requires a majority vote of the City Council. While adjustments to CIP projects are more common, this is generally due to project delays, unforeseen environmental issues, newly identified funding, or amendments to project scope. Proposed mid-year adjustments for both the Operating and Capital Improvements Program Budgets submitted to the City Council require identification of the specific funding sources for the adjustments.

CONCLUSION

The six existing budget principles, with the addition of the two proposed budget principles, will continue to provide a strong foundation to guide budget decision-making and the budget development process and will be implemented incrementally. While it is not always possible to strictly adhere to them, the development of the annual budget is guided by these principles.

ALTERNATIVES

Other alternatives include: 1) adopt the revision to Budget Principle #2, but adopt neither of the Proposed Budget Principles, 2) adopt only the two Proposed Budget Principles, and not the revision to Budget Principle #2, or 3) adopt only one of the two Proposed Budget Principles.

Respectfully submitted,

Lisa Irvine
Financial Management Director

Approved: Michael T. Uberuaga
City Manager

IRVINE/AJC